

REMARKS

Claims 1-8 are pending in the application. Claim 4 has been cancelled without prejudice. Claims 1, 3, 5 and 7 have been amended.

I. Rejections Under 35 U.S.C. § 102

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Cazeau, et al. (U.S. Patent No. 5,995,870, “Cazeau”). Applicant respectfully traverses the grounds for this rejection. However, without conceding the correctness of the Examiner’s position, Applicant notes that claim 1 has been amended to render it more clear and definite and to emphasize its patentable novelty. Applicant notes that claim 4 has been cancelled without prejudice and the claim 4 limitation has been incorporated into independent claim 1.

The Examiner asserts that the element Extrasystole Detection Circuit block of Fig. 2 of Cazeau represents discriminating a ventricular extrasystole and that the element 80 of Fig. 2 of Cazeau represents sensed ventricular cardiac activity and detecting an occurrence of a cardiac cycle. Further, the Examiner asserts that Fig. 2 and column 5, line 25 through Col. 6, line 16 of Cazeau disclose discriminating means for detecting variations, determining a presence of an absence of a significant mechanical activity and determining a noxious character and a non character. Cazeau discloses determining the cardiac site(s) of optimal stimulation (*See* Col. 5, line 25-26) and verifying that the configuration is the optimal configuration by measuring, at each cardiac cycle or at regular intervals, the delay interval from the depolarization to the beginning of the valvular opening and comparing the measured delay interval to the time interval that had been memorized as the optimal value. Cazeau discloses “eliminat[ing] from the analysis

all cycles presenting an anomaly, especially atrial extrasystoles and ventricular extrasystoles (that is, a ventricular detection not preceded by an atrial depolarization.” (See Col 5, line 67 through Col. 6, line 3).

Cazeau does not disclose or suggest a means for determining a noxious character of the ventricular extrasystole in response to a determined absence of significant mechanical activity and a non noxious character of the ventricular extrasystole in response to a determined presence of significant mechanical activity. Applicant has amended claim 1 to include “wherein the discriminating means further comprises means for evaluating an increase in the intracardiac impedance measured between two cavities of the heart after the occurrence of the detected ventricular extrasystole, comparing said increased intracardiac impedance measured between two cavities of the heart to a predetermined threshold, and determining a presence of a significant mechanical activity of the myocardium in response to said increase crossing said threshold.” Cazeau does not disclose or suggest any way to discriminate ventricular extrasystole as noxious or non-noxious as required by claim 1.

“[A] claim is anticipated if each and every limitation is found either expressly or inherently in a single prior art reference.” *Celeritas Techs., Ltd. v. Rockwell Int’l. Corp.*, 150 F.3d 1354, 1361, 47 U.S.P.Q.2d 1516, 1522 (Fed. Cir. 1998). The standard for lack of novelty, that is, for “anticipation,” is one of strict identity. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1296, 63 U.S.P.Q.2d 1597, 1600 (Fed. Cir. 2002). Because Cazeau fails to expressly or inherently disclose or suggest the above structure or functionality, it cannot be anticipating prior art under 35 U.S.C. § 102.

Moreover, the recent Supreme Court decision in *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct.

1727 (April 30, 2007) has done away with the rigid “teaching, suggestion, or motivation test” traditionally relied on to establish a *Prima Facie* case of obviousness. Instead of this rigid test, the Court has offered a “common sense” approach to making determinations of obviousness, stating that an initial inquiry should be “whether the improvement is more than just a predictable use of the prior-art elements according to their established functions.” *See KSR Int’l*, 127 S. Ct. at 1739, 1740. The Court also acknowledged that it is equally important to determine if there is an “apparent reason” to combine the references based on their “interrelated teachings.” *Id.* Finally, the Court also impliedly recognized that the prior art references, when combined, still must disclose all of the elements of the invention at issue for obviousness to be found. *Id.*

As discussed above, Cazeau fails to disclose or suggest classifying said discriminated ventricular extrasystole as noxious or non-noxious as required by claim 1. Thus, Cazeau fails to teach or suggest every element required by amended claim 1, demonstrating that claim 1 is not a predictable use of elements taught by Cazeau.

For the foregoing reasons, Applicant believes claim 1, and dependent claims 2 and 5, are now in condition for allowance.

II. Rejections Under 35 U.S.C. § 103(a)

Claims 3 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cazeau and claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cazeau in view of Bonnet, et al. (U.S. Patent No. 6,052,616 “Bonnet”). Applicant respectfully traverses the grounds for this rejection.

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As discussed above with respect to claim 1, Cazeau fails to disclose each and every element of amended claim 1. Bonnet does not cure this deficiency. Thus, for at least the same reasons discussed above, Applicant believes that claims 3 and 6-8 are now in condition for allowance.

CONCLUSION

Reconsideration of this application in view of the foregoing remarks respectfully is requested.

The Examiner is invited to call Applicant's undersigned attorney if doing so would expedite prosecution.

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